



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

07-20-07

08:03 AM

Application of California-American Water Company (U 210W) to Decrease Revenues For Water Service in its Coronado District by (\$73,100) or (0.46%) in 2008 and Increase Revenues by \$266,200 or 1.67% in 2009 and \$260,900 or 1.61% in 2010

A.07-01-036

Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Larkfield District by \$1,272,000 or 61.91% in 2008, \$134,300 or 3.94% in 2009 and \$129,900 or 3.67% in 2010 Under the Current Rate Design or Decrease Revenues by (\$742,200) or (36,12% in 2008 and Increase Revenues by \$50,000 or 3.72% in 2009 and \$63,500 or 4.55% in 2010 Under the Proposed Rate Design.

A.07-01-037

Application of California-American Water Company (U 210 W) to increase Revenues for Water service in its Sacramento District by \$8,966,900 or 33.89% in 2008, \$1,905,700 or 5.36% in 2009 and \$1,860,700 or 4.97% in 2010 Under the Current Rate Design or by \$10,981,000 or 41.50% in 2008, \$1,925,900 or 5.11% in 2009, and \$1,845,600 or 4.66% in 2010 Under the Proposed Rate Design.

A.07-01-038

Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Village District by \$1,537,300 or 7.43% in 2008, \$243,400 or 1.08% in 2009, and \$232,900 or 1.02% in 2010.

A.07-01-039

**REPLY OF THE
MARK WEST AREA COMMUNITY SERVICES COMMITTEE
TO THE
CALIFORNIA-AMERICAN WATER COMPANY'S
MOTION TO STRIKE THE REPLY BRIEF OF
THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

**James M. Boulter
Mark West Area Community Services Committee
133 Eton Court
Santa Rosa, CA. 95403
(707) 546-3097
JBoulter@comcast.net**

Date July 20, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U 210W) to Decrease Revenues For Water Service in its Coronado District by (\$73,100) or (0.46%) in 2008 and Increase Revenues by \$266,200 or 1.67% in 2009 and \$260,900 or 1.61% in 2010	A.07-01-036
Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Larkfield District by \$1,272,000 or 61.91% in 2008, \$134,300 or 3.94% in 2009 and \$129,900 or 3.67% in 2010 Under the Current Rate Design or Decrease Revenues by (\$742,200) or (36,12% in 2008 and Increase Revenues by \$50,000 or 3.72% in 2009 and \$63,500 or 4.55% in 2010 Under the Proposed Rate Design.	A.07-01-037
Application of California-American Water Company (U 210 W) to increase Revenues for Water service in its Sacramento District by \$8,966,900 or 33.89% in 2008, \$1,905,700 or 5.36% in 2009 and \$1,860,700 or 4.97% in 2010 Under the Current Rate Design or by \$10,981,000 or 41.50% in 2008, \$1,925,900 or 5.11% in 2009, and \$1,845,600 or 4.66% in 2010 Under the Proposed Rate Design.	A.07-01-038
Application of California-American Water Company (U 210 W) to Increase Revenues for Water Service in its Village District by \$1,537,300 or 7.43% in 2008, \$243,400 or 1.08% in 2009, and \$232,900 or 1.02% in 2010.	A.07-01-039

**REPLY OF THE
MARK WEST AREA COMMUNITY SERVICES COMMITTEE
TO THE
CALIFORNIA-AMERICAN WATER COMPANY'S
MOTION TO STRIKE THE REPLY BRIEF OF
THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

I. INTRODUCTION

Pursuant to rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Mark West area Community Services Committee ("MWACSC"), hereby submits this reply to the California-American Water Company's ("Cal-Am") motion to strike the Reply Brief of the MWACSC.

As was the case with Cal-Am's MOTION TO STRIKE the Opening Brief of the MWACSC, Cal-Am's motion is replete with false statements, accusations, exaggerations and general gobbledygook and should be set aside and ignored by the Administrative Law Judge and by the Commission.

II. CAM-AM REPEATS ITS PREVIOUS FALSE CLAIMS.

In its Motion to Strike the Reply Brief of the MWACSC, Cal-Am repeated most of the same false claims that it made in its Motion to Strike the Opening Brief of the MWACSC. Notable among these claims are:

A. “Through the course of this proceeding, representatives for California-American Water, DRA and MWACSC have met on numerous occasions for settlement negotiations.”¹

Regardless of the number of times it is repeated the statement remains false. MWACSC was systematically excluded from any substantive settlement negotiations.

MWACSC did attend a “Meet and Confer” session on April 24, 2007 at the Commission’s office at 505 Van Ness Avenue, San Francisco ten days before DRA and Intervenor testimony was due. That meeting was also a full month before the scheduled beginning of Settlement Negotiations as stated in the Scoping Memo issued by the assigned Commissioner and the Administrative Law Judge on April 11, 2007.

The April 24 meeting was not a meeting in which any settlement negotiations took place. It was more of a statement of position by the parties. It was also characterized by subtle probing by Cal-Am’s attorneys as to the contents of MWACSC’s testimony.

It appears that subsequent meetings were held between DRA and Cal-Am but MWACSC was excluded from those settlement negotiations by not being informed of the date, time and place of such meetings.

The “All Parties Settlement Conference” on May 24 was a settlement conference in name only in that no actual negotiations took place.

MWACSC was informed during that meeting of some issues in which DRA and Cal-Am had reached agreement. None of the agreements included in the

¹ Cal-Am’s Motion to Strike the Reply Brief of the MWACSC page 5

Settlement Agreement were reached in the presence of, or in consultation with any representative of MWACSC

Committee member James Bouler was called by telephone on the afternoon of Friday June 8 by Sarah Leeper, Attorney for Cal-Am, to inquire about availability of MWACSC for a meeting on Monday June 11, 2007. Since Ms. Leeper never called back to confirm the meeting, or to give time and location, MWACSC was not present at that meeting.

James Bouler was called again on the morning of June 11 and asked if he would participate in a telephone conference, to which he agreed.

Again, no negotiations took place. This was more in the order of an informational conference. Cal-Am's attorneys outlined the areas in which DRA and Cal-Am had reached agreement by which time the Settlement Agreement between DRA and Cal-Am was already an accomplished fact.

B. QUALIFICATIONS OF MWACSC'S WITNESS

Cal-Am again raises the issue of MWACSC's witness qualifications to offer "expert advice" in the design of the North Wikiup Tank No. 2.²

Cal-Am states that the Commission should strike MWACSC's Expert Opinions because MWACSC's witness is a non expert who is not qualified to offer expert advice³.

MWACSC's witness has not held himself out to be "Expert" on any subject. Qualification s for MWACSC's witness James Bouler were established in the Response of The Mark West Area Community Services Committee to California-American Water Company's Motion the Strike the Testimony of the MarkWest Area Community Services Committee.⁴

² Cal-Am's Motion to Strike the Reply Brief of the MWACSC, page 6 and page 8

³ Ibid page 6.

⁴ Response Of MWACSC to Cal-Am's Motion to Strike the Testimony of MWACSC, attachment.

Qualifications of James Bouler show that he is a Licensed Civil Engineer in the State of California.⁵ As such he is legally entitled to engage in the practice of Civil Engineering as that term is defined in Section 6731 of the California Business and Professions Code.

As defined in said Section 6731, Water Supply is one of the studies or activities embraced by the practice of Civil Engineering.

C. NORTH WIKIUP TANK NO. 2

Cal-Am has, again in its Motion to strike the Reply Brief of MWACSC, stated “Without any expertise in seismic engineering standards, MWACSC, draws numerous conclusions regarding California American Water’s design of the North Wikiup Tank No. 2.⁶

As was stated in MWACSC’s Reply to Cal-Am’s MOTION TO STRIKE the Opening Brief of MWACSC (page 10), MWACSC’s witness has not claimed to be “expert” in any subject

MWACSC’s witness is a Licensed Civil Engineer in the State of California and, as such, is legally entitled to engage in the practice of Civil Engineering as that term is defined in Section 6731 of the California Business and Professions Code.

No expertise is required to read portions of the Geotechnical Report and other documents related to the tank and determine that the experts who compiled the documents have misgivings about the safety of the tank.

Some examples of this are:

- 1. “Based upon our discussions with Cal Am and RBF consulting, it is our understanding that Cal Am understands the risks that may be present at this site**

⁵ Qualifications of James M. Bouler, Attachment to Response of The Mark West Area Community Services Committee to California American water Company’s Motion to Strike the Testimony of the Mark West area Community Services Committee.

⁶ Cal-Am’s Motion to Strike the Reply Brief of MWACSC page 6

due to its very close proximity to the Rogers Creek fault, and the potential for up to two meters of horizontal ground movement. However Cal Am is willing to accept the risks of severe foundation and tank damage should major seismic shaking or horizontal ground movement occur beneath the tank.”⁷

- 2. “24. Please note, per item 3, no additional geologic study has been undertaken to determine the precise location of the Rogers Creek fault. Therefore, there is the potential for up to two meters of horizontal ground displacement which could occur beneath the proposed tank foundation.”⁸**
- 3. “Although performing a complete geological hazards analysis was not a part of our scope of services, we feel it is prudent to point out that the water tank site nearly abuts the active trace of the Healdsburg fault, which in essence is the northern termini of the Rogers Creek fault, a major strike-slip capable of up to two meters of horizontal movement according to recent researchers.”⁹**
- 4. “Utilizing the aforementioned report to assess the surface fault ground rupture hazard and risk is problematic, partly because of the legibility of the logs, but mostly because the standard of care for fault investigations and our understanding of fault rupture and secondary effects (warping and secondary cracking) has increased dramatically over the last two decades”¹⁰**
- 5. “California American Water has a full understanding of the risks that may be present at this project site due to its close proximity to an active fault, and is willing to accept the risks of severe foundation and tank damage to the existing and proposed tanks.”¹¹**

⁷ Exhibit 33, Exhibit C to the testimony of MWACSC Geotechnical Investigation and Seismic Shaking Hazards Analysis for Wikiup Water Tank Project, Santa Rosa, CA. By Pacific Crest Engineering, Inc. page 6 and page 8

⁸ Ibid. FOUNDATION – SPREAD FOOTINGS, item 24 page 12

⁹ Exhibit 33, Exhibit C to the Testimony of MWACSC, Zinn Geology Letter dated February 3, 2006, page 1 and Conclusions page 15

¹⁰ Ibid. Zinn Geology Letter page 3, referring to the Harding Lawson report used by Cal-Am to determine that the fault did not underlie the tank site.

¹¹ Exhibit 17, Exhibit F to the Rebuttal Testimony of Thomas Glover, Final Basis of Design Report, California American Water, Wikiup Tank No. 2, Larkfield Service area, by RBF Consulting, Section 3.0, Tank Alternatives, Tank Foundation (unnumbered pages)

Cal-Am's Engineers and Geologists appear to be distancing themselves from the decision to construct the tank on the chosen site. Repeatedly, the statement is made that "Cal-Am has a full understanding of the risks that may be present at this project site due to its close proximity to an active fault and is willing to accept the risks...." ¹²

These repeated warnings of the risks involved in constructing the tank at the chosen site are sufficient to raise grave concerns in the minds of anyone, whether expert or lay person. They should not be ignored as Cal-Am is apparently willing to do and is asking the Commission to do.

The MWACSC observations about the North Wikiup Tank No. 2 were made after consultation with Mr. Peter J. Lescure who is also a Licensed Civil engineer in the State of California, DBA Lescure Engineers. Mr. Lescure is also a member of the MWACSC.

MWACSC is only asking that the Commission issue an Order Instituting Investigation so that the Commission can determine for itself if the tank is safe as constructed and as claimed by Cal-Am

D. Cal-Am Again Attacks MWACSC's Statements and Conclusions Regarding Conservation.¹³

Cal-Am states that MWACSC's Reply Brief also contains a number of conclusions regarding the effects of conservation on the water supply deficit in the Larkfield District that amount to nothing more than speculation that is unsupported by any record evidence.¹⁴

That statement is completely false. Ample evidence of the effects of conservation on the water supply deficit are contained in the Annual and Overall

¹² Refer to footnotes 7 through 11 above

¹³ Cal-Am's Motion to Strike the Reply Brief of MWACSC, page 8

¹⁴ Ibid.

Water savings Analysis employed by Cal-Am in response to MWACSC's data request and reprinted in MWACSC's Testimony.¹⁵

Cal-Am apparently now wishes to disavow or ignore evidence that it has presented in response to data requests.

No speculation is required, and none is involved, in reading that document and comparing it to the water supply deficit calculations contained in Thomas Glover's Rebuttal Testimony.¹⁶

Such comparison proves that the water supply deficit can be significantly reduced or eliminated through conservation.

III. CAL-AM CLAIMS THAT MWACSC HAS RELIED ON OPINION RATHER THAN FACTS.

Cal-Am repeats the same claims that MWACSC has relied on opinion rather than fact that it introduced in its Motion to Strike the Opening Brief of the MWACSC, Some examples of this are.

- A. "even if a 400 gpm well is added the required filtration capacity would be only about 901 gpm or about $\frac{3}{4}$ of the capacity of the tank."¹⁷

The statement is true, is supported by fact that is a part of the record and was addressed in the MWACSC's Reply to Cal-Am's Motion to Strike the Opening Brief of MWACSC.¹⁸

- B. "MWACSC illogically concludes that conservation can be used to reduce water supply needs during peak demand because 'Peak Demand periods should be the time when conservation is most effective.' What should be the

¹⁵ Exhibit 32, Testimony of MWACSC page 17

¹⁶ Exhibit 17, Rebuttal Testimony of Thomas Glover pages 16 - 25

¹⁷ Cal-Am's Motion to Strike the Reply Brief of MWACSC page 8

¹⁸ MWACSC's Response to Cal-Am's Motion to Strike the Opening Brief of the MWACSC pages 6 and 7

most effective time for water conservation (peak demand) to take place is not necessarily when customers actually choose to conserve water.” ¹⁹

If the last sentence is true, then it bears strong evidence that Cal-Am is not doing an adequate job of educating customers on the need to conserve. In which case, Cal-Am should cease to collect money from ratepayers for its conservation program.

- C. “Notably missing from the Reply Brief are references to evidence supporting MWACSC’s opinions. MWACSC’s Reply Brief contains only a handful of references to “testimony” that allegedly support MWACSC’s statement and claims.” ²⁰

Again, Cal-Am has made a false statement. In fact there are fifty six (56) footnote references in the MWACSC Reply Brief to evidence contained in the record. That would hardly be termed “only a handful” by anyone’s definition of the term.

Where a reference is made to evidence contained in the record the statement cannot be termed “opinion”.

IV. CAL-AM DISTORTS MWACSC’S STATEMENTS

In its Motion to Strike the Reply Brief of the MWACSC, Cal-Am states, “MWACSC proposes that California American Water’s supply analysis should be recalculated using a different factor, even though MWACSC acknowledges that the factor is based upon actual, historical data.” ²¹

We could be charitable here and state that the author of that statement is past due for a trip to the optometrist, but we will not be so charitable. We suspect, given Cal-Am’s penchant for obfuscation and distortion, that this is another attempt to confuse and deceive the commission and its staff.

¹⁹ Cal-Am’s Motion to Strike the Reply Brief of MWACSC page 8 and 9

²⁰ Ibid. page 7

²¹ Ibid. page 4

The actual statement in MWACSC's Reply Brief is: "The Maximum Day Demand should also be recalculated using the historic Maximum Day to Average Day factor of 1.79 rather than the 1.928 factor that was used."²² The statement is rather difficult to misconstrue.

V. CAL-AM INVOKES THE "FUNDAMENTAL PRINCIPLES OF FAIRNESS."

In its Motion to Strike the Reply Brief of the MWACSC Cal-Am states "...MWACSC's Reply Brief violates the Commission's Rules of Practice and Procedure and fundamental principles of fairness...." ²³

We hardly think that Cal-Am and its attorneys have reason to accuse anyone of violating "the fundamental principles of fairness"

California American Water Company has filed motions to strike every document filed by the MWACSC. They filed a motion to strike the testimony of the MWACSC²⁴, they filed a motion to strike the Opening Brief of the MWACSC²⁵ and they filed a motion to strike the Reply brief of the MWACSC²⁶.

It is obvious that Cal-Am and its battery of lawyers wishes to suppress the true facts in this proceeding by silencing the MWACSC or, failing that, to overwhelm the Committee with a constant stream of accusatory, demeaning legalistic nitpicking. (Our conclusion.)

The California Public Utilities Commission encourages ratepayers to participate in proceedings before the Commission in its publication "Guide to Public Participation".

There is small wonder that more people choose to not participate since participation is to subject themselves to such vitriolic, accusatory and demeaning attack by the utility and its army of litigious attorneys.

VI. CONCLUSION

²² Reply Brief of the MWACSC, filed July 3, 2007 page 12

²³ Cal-Am's Motion to Strike the Reply Brief of MWACSC, page 2

²⁴ Filed May 17, 2007

²⁵ Filed July 3, 2007

²⁶ Filed July 11, 2007

California-American Water Company and its battery of attorneys have once again unleashed a smear campaign against the Mark West Area Community Services Committee with a barrage of inflammatory, accusatory, unfounded and above all false statements. It is clear that Cal-Am, its advisors and attorneys wish to conceal certain facts in this proceeding.

The Judge and the Commission should take special note of the concealment, the exaggeration, the false and misleading statements and should admonish Cal-Am and its attorneys that they, too, are bound by the terms of Rule 1.1, Ethics, of the Commission's Rules of Practice and Procedure.

The Mark West Area Community Services Committee urges the Administrative Law Judge to set aside and ignore Cal-Am's Motion to Strike the Reply Brief of the Mark West Area Community Services Committee.

Respectfully Submitted

/S/ JAMES. M. BOULER
James M. Boulter

CERTIFICATE OF SERVICE

I hereby certify that I have this day, July 20, 2007, served the within

**REPLY OF THE
MARK WEST AREA COMMUNITY SERVICES COMMITTEE
TO THE
CALIFORNIA-AMERICAN WATER COMPANY'S
MOTION TO STRIKE THE REPLY BRIEF OF
THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE**

on the interested parties in this action by transmitting this document electronically from my home at 133 Eton Court, Santa Rosa, California 95403 to the electronic e-mail addresses listed on the attached service list.

In addition to the e-mail service list I have filed the above document, in PDF/A format, electronically by transmitting the same to the Docket Office of the California Public Utilities Commission at [HTTP://EFILE.CPUC.CA.GOV](http://efile.cpuc.ca.gov) .

I hereby certify that the original, signed copy of the above document is available for review and copying at the request of the Commission or any party.

Executed at Santa Rosa, California, July 20, 2007

**/S/ JAMES M. BOULER
James M. Boulter**

SERVICE LIST

LRR@CPUC.CA.GOV
MPO@CPUC.CA.GOV
JRC@CPUC.CA.GOV
FLC@CPUC.CA.GOV
LWEISS@STEEFEL.COM
LDOELQUEIST@STEEFEL.COM
SLEEPER@STEEFEL.COM
DSTEPHEN@AMWATER.COM
DARLENE.CLARK@AMWATER.COM
KTURNER@CALAMWATER.COM
DEMORSE@OMSOFTE.COM
JBOULER@COMCAST.NET
PLESCURE@LESCURE-ENGINEERS.COM
MARKWEST@MARKWEST.ORG
JSPURGIN@TOAKS.ORG